S.B. Civil Writ Petition No.7382/02

24.01.2007

Hon'ble Mr. Justice Mohammad Rafiq

Mr. Anoop Dhand, Advocate for petitioner.
Mr. B.S. Chhaba, Dy. GA.

Heard learned counsel for the petitioner. The petitioner in the present writ petition has challenged the order dated 30.8.2002 whereby his licence as Fair Price Shop Dealer has been cancelled by the District Collector, Sikar vide order dated 30.8.2002. Learned counsel for the petitioner in assailing the said order argued that no opportunity of hearing was provided to the petitioner in as much as no enquiry in terms of the provisions contained in Rajasthan Foodgrains and Other Essential Articles (Regulation of Distribution) Order, 1976

was conducted. Sub-clause (2) of Clause (8) of the aforesaid order clearly provides that no order of cancellation shall be made unless the licence holder has been given a reasonable opportunity of stating his case against the proposed cancellation. Learned counsel for the petitioner therefore submits that the order dated 30.8.2002 be quashed and set aside.

On the other hand the learned Dy. Government Advocate argued that the order of cancellation of the Collector is itself a speaking order. In this order it has been clearly stated that the licence of the petitioner has been cancelled on the basis of the enquiry report submitted by Enforcement Officer, Neem Ka Thana. Such enquiry was held on receiving various complaints from the customers. He

further submits that the petitioner instead directly challenging the order of cancellation ought to have availed the alternative remedy by filing an appeal under Clause 22 of the Order of 1976.

Having heard the learned counsel for the parties I find that although the order dated 30.8.2002 does make a reference to the enquiry report submitted by Enforcement Officer but the respondents have not rebutted the allegations made in the petition by filing the counter affidavit as to whether opportunity of hearing was provided to the petitioner but at the same time, all these factual aspects can be better appreciated and looked into by the appellate authority. According to Clause 22 supra, appeal against the order of the Collector lies to the

Commissioner. Learned counsel for the petitioner however submits that the limitation for filing such an appeal being only 30 days, this would be an impediment in his way to file appeal at this belated stage. He further submits that during the pendency of the present writ petition, the interim order has been obtaining in favour of the petitioner dated 23.10.2002 whereby the operation of the impugned order of cancellation was stayed.

In the facts of the case, therefore, while I do not see any special reason to entertain the present writ petition bypassing the statutory remedy of appeal provided for by clause 22 supra, I deem it appropriate to direct the respondents to entertain the appeal if now filed by the petitioner within 45

days from today. As regards the interim order, the discretion there about shall be exercised by the appellate authority on judicious considerations as to whether the licence in regard to the area in question should be granted to any other person till the appeal preferred by the petitioner is decided. It is further directed that the appellate authority shall decide the appeal of the petitioner if filed within 45 days from today within next three months thereafter. In case no such appeal is filed, the respondents shall be free to proceed in accordance with law. With these observations, the present writ petition is dismissed as being not maintainable though without any order as regards the costs.

(Mohammad Rafiq),J.

Rs/-